



INTERIOR BOARD OF INDIAN APPEALS

Estates of Benjamin Harrison Stowhy and Mary G. Guiney Harrison

1 IBIA 269 (06/30/1972)

Also published at 79 Interior Decisions 428

Judicial review of this case:

Consent decree, *Goheen v. Morton*, Civ. No. 2879 (E.D. Wash. Dec. 23, 1974)

Related Board case:

3 IBIA 243



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF BENJAMIN HARRISON STOWHY
(DECEASED YAKIMA ALLOTTEE NO. 2455)

and

ESTATE OF MARY G. GUINEY HARRISON
(DECEASED COLVILLE ALLOTTEE NO. S-925)

IBIA 72-23

Decided June 30, 1972

Petition for rehearing challenging constitutionality of an amendment to Yakima Enrollment Act certified to Director, Office of Hearings and Appeals for exercise of Director's supervisory authority by Hearing Examiner, Richard J. Montgomery.

Petition denied; Order Approving Will of Mary G. Guiney Harrison reversed and remanded on other grounds.

Indian Probate: Generally

The Department of the Interior does not have the authority to declare a federal statute unconstitutional.

APPEARANCES: C. James Lust, Esq. (Hanson and Lust) for petitioners.

OPINION BY MR. DAY

This matter arose by reason of a petition for reconsideration, filed pursuant to 43 CFR 4.241, in the Estate of Benjamin Harrison Stowhy. As the sole issue raised was a challenge to the constitutionality of a federal statute, Hearing Examiner Richard J. Montgomery certified the petition to the Director, Office of Hearings and Appeals, with a request that he exercise his delegated supervisory authority. ^{1/} The Estate of Mary G. Guiney Harrison was also certified to the Director because of factors that will be made evident later in this decision.

Benjamin Harrison Stowhy, an enrolled Yakima Indian, died on March 8, 1968, without leaving natural issue, father, mother, brother, sister or issue thereof. At the time of his death, he was possessed of four allotments located within the Yakima Reservation with an appraised value of \$136,400 and cash in his Yakima Agency IIM account totaling \$2,508.22. By a will executed on January 15, 1951, he devised his entire estate to his wife, Mary G. Guiney Galler Carroll Alexson Stowhy Harrison, an enrolled Colville Indian. Mary died on December 2, 1968, possessed of a 1/96 share of an allotment on the Colville Reservation valued at \$8, cash in her Colville Agency IIM account totaling \$250, and an allotment located within the Yakima Reservation with an appraised value of \$11,500. Mary's Yakima allotment is one-half of the original allotment of Benjamin's mother,

^{1/} See 43 CFR 4.5 (211 DM 13.1; 35 F.R. 12081).

Cecelia Stowhy; less five acres deeded by Mary to Esther S. Monjarez, the adopted daughter of Benjamin and Mary, on September 8, 1968. 2/ By a will executed on March 29, 1968, Mary devised the bulk of her estate to Martina Guiney Grey, an enrolled Colville Indian and a daughter, by a previous marriage to Cornelius Guiney (deceased non-Indian).

On April 11, 1972, Examiner Montgomery issued orders approving both wills and declared Martina to be the sole beneficiary of Mary's estate, which also included Benjamin's entire estate. The Examiner erred in the reading of Mary's will. A reading thereof discloses a devise of two acres out of the allotment of Cecelia Stowhy to a second daughter, Margaret McDonald (Martina's sister).

In addition, the Examiner found that by virtue of Public Law 91-627, the "Yakima Indian trust estate is subject to the option of the Yakima Indian Tribe, within 2 years from the date of this order, to purchase this Yakima Indian trust property from the above devisee. * * *

The petitioners, who allege to be "enrolled members of the Yakima tribes of one-fourth or more blood of the Yakima tribe" and distant

2/ Esther Stowhy Monjarez is Mary's granddaughter and the daughter of Margaret Guiney S. McDonald. Esther has filed a separate petition for rehearing which is not part of this matter.

relatives of Benjamin, 3/ charge that Public law 91-627, enacted on December 31, 1970, "applies retrospectively and denies the petitioners due process under the Fifth Amendment of the U. S. constitution." The legislation at issue is quite unique. To understand its effect on the parties it is necessary that we review its history. Prior to Public Law 91-627, section 7 of the Act of August 9, 1946, read:

After August 9, 1946, only enrolled members of the Yakima Tribes of one-fourth or more blood of such tribes shall take by inheritance or by will any interest in that part of the restricted or trust estate of a deceased member of such tribes which came to the decedent through his membership in such tribes or which consists of any interest in or the rents, issues, or profits from an allotment of land within the Yakima Reservation or within the area ceded by the treaty of June 9, 1855 (12 Stat. 951) * * *. 60 Stat. 968, 25 U.S.C. § 607 (1958).

3/ The petitioners are the heirs of Hannah S. Yallup (4/4), deceased, Maggie E. Goheen (3/4), Charles P. Eyle (3/4), Frank Eyle (3/4), Elijah Lewis (7/8), Marguerite Guineys S. McDonald, Lila June Sanders Broxon, Elsie Sam (4/4), John T. Eyle (3/4), Evans Lewis (7/8), Edger Lewis (7/8) and Ernest Lewis (7/8). The record is not precise as to the petitioner's relationship to Benjamin. The fractions shown in parentheses indicate the degree of Yakima blood as reported by the Yakima Indian Agency.

Marguerite Guineys S. McDonald and Lila June Sanders Broxon are reported to be enrolled at the Colville Indian Agency. It is probable that Marguerite is the same person as Mary's daughter, Margaret. If so, it is questionable why she is named as a petitioner. To add to the confusion, the record contains a power of attorney to Pat Cockrill, Esq., signed by Marguerite. The record contains testimony that Lila is the daughter of Esther Smith Sanders (deceased) an adopted daughter of Mary and Cornelius Guiney.

The petition for rehearing was filed in the Estate of Benjamin Harrison Stowhy only and makes no reference to the Estate of Mary G. Guiney Harrison.

The Act of August 9, 1946, has been interpreted to bar a prospective heir or devisee with less than one-quarter Yakima blood from inheriting Yakima lands, Estate of Hattie Lindsey, IA-1158 (May 2, 1966). When a person is disqualified by the Act of August 9, 1946, he is regarded as having predeceased his ancestor and the inheritance is passed upon the decedent's next of kin who are otherwise qualified. Solicitor's Opinion, M-36331 (March 16, 1956).

Public Law 91-627, 84 Stat. 1874, amended section 7 of the Act of August 9, 1946, by substituting the following:

(a) A person who is not an enrolled member of the Yakima Tribes with one-fourth degree or more blood of such tribes shall not be entitled to receive by devise or inheritance any interest in trust or restricted land within the Yakima Reservation or within the area ceded by the Treaty of June 9, 1855 (12 Stat. 1951), if, while the decedent's estate is pending before the Examiner of Inheritance, the Yakima Tribes pay to the Secretary of the Interior, on behalf of such person, the fair market value of such interest as determined by the Secretary of the Interior after appraisal. The interest for which payment is made shall be held by the Secretary in Trust for the Yakima Tribes.

(b) On request of the Yakima Tribes the Examiner of Inheritance shall keep an estate pending for not less than two years from the date of decedent's death.

* * * * *

Section 2 of Public Law 91-627 is unusual, in that it provides:

The provisions of section 7 of the Act of August 9, 1946, as amended by this Act, shall apply to all estates

pending before the Examiner of Inheritance [4/] on the date of this Act [December 31, 1970], and to all future estates, but shall not apply to any estate heretofore closed. (Emphasis added.)

Although the petitioners have not alleged the taking of specific property without due process of law, it is apparent they contend that at the time of Benjamin's death, they were his next of kin and the only heirs entitled to inherit his Yakima trust or restricted land. 5/ Their contention appears to be based on the hornbook principle that real property vests in the heirs or devisees upon the death of the owner. 31 Am Jur 2d, Executors and Administrators, § 246. Therefore, it is contended that the passage of Public Law 91-627 divested the petitioners of their inherited estate which was vested on March 8, 1968, the date of Benjamin's death.

I find that the petitioners have raised a serious constitutional challenge. However, the Department is without authority to declare the legislation unconstitutional. Only the courts have the authority to take action which runs counter to the expressed will of Congress. 3 Davis, Administrative Law Treatise, § 20.04; Public Utilities Commission v. United States, 355 U.S. 534, 539 (1958).

4/ The title of Examiner of Inheritance has been changed to Hearing Examiner.

5/ Mary, Martina, Margaret and Esther are Colville enrollees and do not have the requisite one-fourth Yakima blood.

Notwithstanding the Department's inability to entertain a challenge to the constitutionality of an act of Congress, the Examiner acted correctly in certifying the issue to the Director. It is the policy of the Department of the Interior to expedite the exhaustion of a petitioner's administrative remedy whenever the petitioner, in good faith, raises a serious issue as to the constitutionality of an act the Department is charged with administering, so that he may pursue the proper relief in the courts. Such a policy not only affords prompt relief to the petitioners, but assists departmental officials in properly meeting their responsibilities.

Therefore, pursuant to the authority delegated to the Director, Office of Hearings and Appeals, by the Secretary of the Interior, 211 DM 13.1; 35 F.R. 12081, it is ordered:

1. The petition for rehearing is denied. This decision is final for the Department, but shall not be executed prior to the expiration of 60 days from the date hereof.
2. The Examiner's Order approving will of Mary G. Guiney Harrison is reversed and remanded for actions consistent with this decision and the estate is hereby ordered reopened.
3. It is ordered that the petitions filed by Esther Stowhy Monjarez and Louis Joseph M. Ives be returned to the Examiner for action pursuant to 43 CFR 4.241.

4. It is ordered that this decision shall be executed and distributed by the Examiner pursuant to 43 CFR 4.296.

//original signed

James M. Day, Director
Office of Hearings and Appeals